IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 24317 of 2006(T)

PETITIONER:

N. VIJAYAKUMARI,
P.W.D. CONTRACTOR, NARAYANA VILASOM,CHOORAKKODU,
ADOOR, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:

----

1. **STATE OF KERALA,**
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
   DEPARTMENT OF PUBLIC WORKS,GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE SUPERINTENDING ENGINEER,**
   P.W.D. (ROAD AND BRIDGES) SOUTH CIRCLE,
   THIRUVANANTHAPURAM.

3. **THE EXECUTIVE ENGINEER,**
   P.W.D. ROADS DIVISION, PATHANAMTHITTA.

4. **THE ASSISTANT EXECUTIVE ENGINEER,**
   P.W.D. ROADS SUB DIVISION, RANNI.

BY GOVERNMENT PLEADER SMT. K.R.DEEPA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH J.

W.P(C)No.24317 of 2006

Dated this the 14th day of February, 2007

JUDGMENT

The writ petition is filed mainly with the following prayers:-

> ii) to declare that respondents are not entitled to terminate the contract executed by the petitioner with them vide No.65/SESC/1998-99 with the risk and cost of the petitioner.
>
> iii) to issue a writ in the nature of mandamus or any other appropriate writ direction or order commanding the respondents to disburse the security amount, retention amount and the amount due to the petitioner by way of executing the work to the petitioner with interest forthwith.
>
> iv) to declare that the petitioner is entitled to absolve from the obligation to complete the work covered in agreement No.65/SESC/1998-99 executed by the petitioner with the 2nd respondent due to the delay and latches on the part of the respondents in supplying departmental materials in time and for other reasons solely on the part of the respondents.

It is seen that the petitioner had approached this court earlier leading to Exts.P11 and P12 judgments. In compliance with the judgment the Superintending Engineer considered the request of the petitioner. The stand taken in Ext.P13 is that as per agreement conditions the security

deposit and retention amount can be released only after satisfactory completion of the work. It is also stated that substantial amounts have been paid and no payment is pending on account of the work executed by the petitioner. With regard to the termination of the contract it is stated that despite repeated requests, the petitioner did not complete the work and thus only, left without any option, the agreement was terminated at the risk and cost of the petitioner. It is fairly clear that there are several disputed questions of fact involved in this case. Therefore, it will be open to the petitioner to pursue his grievances before the civil court. Without prejudice to the liberty to the petitioner to work out the surviving grievances before the civil court and making it clear that the time taken for prosecuting this writ petition shall stand excluded while computing the period of limitation, this writ petition is dismissed.

(KURIAN JOSEPH, JUDGE)

ahg.